

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STANDING ROCK SIOUX TRIBE,

Plaintiff,

and

CHEYENNE RIVER SIOUX TRIBE,

Plaintiff-Intervenor,

v.

U.S. ARMY CORPS OF ENGINEERS,

Defendant-Cross
Defendant,

and

DAKOTA ACCESS, LLC,

Defendant-Intervenor-
Cross Claimant.

Case No. 1:16-cv-1534-JEB
(and Consolidated Case Nos. 16-cv-1796
and 17-cv-267)

**OGLALA SIOUX TRIBE’S SUR-REPLY TO REPLY BRIEF IN SUPPORT
OF ARMY CORPS’ MOTION FOR SUMMARY JUDGMENT WITH RESPECT
TO OGLALA SIOUX TRIBE’S CLAIMS**

In its reply brief in support of its motion for summary judgment with respect to claims of the Oglala Sioux Tribe (“Tribe”), ECF 472 (“Corps Reply”), Defendant Army Corps of Engineers (“Corps”) states: “The Tribe had the original spill model methodology and worst case discharge formula ... by no later than November 10, 2016, when these administrative record materials were transmitted to the Tribe.” *Id.* at 8. *See also id.* at 17 (same). This is not true. The Tribe was not a party to this case at that time. The Tribe filed its own action on February 11, 2017, case no. 17-cv-00267, which was consolidated with this case by minute order on March 16, 2017. We requested the administrative record on February 27, 2017, Exhibit A to Declaration

of Michael Roy (“Roy Dec.”), and on March 1, 2017, the Corps’ counsel provided us the November 10, 2016 administrative record, excluding 31 documents pending confidentiality review and discussions and disposition of a motion by Dakota Access, LLC for a protective order. Ex. B to Roy Dec. The excluded documents were provided to us by counsel for Dakota Access on April 10, 2017, *see* Ex. C to Roy Dec., after the Court ruled on the protected information motion, ECF 205 (Order), ECF 206 (opinion), and the parties resolved issues involving protected information. The document cited in the Corps’ Reply as informing the Tribe of the spill model methodology and worst case discharge (“WCD”) formula, USACE_DAPL 72252-53, *see* Corps. Rep. at 8, 17, ECF 472, was provided to the Tribe on March 1, 2017. Roy Dec. ¶ 3. The spill model document containing the WCD calculation, USACE_DAPL 74725, 74729, which was subject to the Court’s ruling on the protective order, *see* ECF 206, was provided to us on April 10, 2017. Roy Dec. ¶ 4.

Respectfully submitted,

s/ Michael L. Roy

Michael L. Roy (DC Bar No. 411841)

mroy@hobbsstrauss.com

Jennifer P. Hughes (DC Bar No. 458321)

jhughes@hobbsstrauss.com

Elliott A. Milhollin (DC Bar No. 474322)

emilhollin@hobbsstrauss.com

Hobbs, Straus, Dean & Walker, LLP

1899 L Street NW, Suite 1200

Washington, DC 20036

202-822-8282 (Tel.); 202-296-8834 (Fax)

Attorneys for Oglala Sioux Tribe

Mario Gonzalez

Gonzalez Law Office

522 7th St 202

Rapid City, SD 57701

(605) 716-6355

Of Counsel for Oglala Sioux Tribe

November 22, 2019

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STANDING ROCK SIOUX TRIBE,

Plaintiff,

and

CHEYENNE RIVER SIOUX TRIBE,

Plaintiff-Intervenor,

v.

U.S. ARMY CORPS OF ENGINEERS,

Defendant-Cross
Defendant,

and

DAKOTA ACCESS, LLC,

Defendant-Intervenor-
Cross Claimant.

Case No. 1:16-cv-1534-JEB
(and Consolidated Case Nos. 16-cv-1796
and 17-cv-267)

**DECLARATION OF MICHAEL L. ROY IN SUPPORT OF OGLALA SIOUX
TRIBE’S SUR-REPLY TO REPLY BRIEF IN SUPPORT OF ARMY
CORPS’ MOTION FOR SUMMARY JUDGMENT WITH RESPECT
TO OGLALA SIOUX TRIBE’S CLAIMS**

I, Michael L. Roy, declare as follows:

1. I am counsel for Plaintiff Oglala Sioux Tribe (the “Tribe”). I am a member in good standing of the District of Columbia bar, and have been admitted to practice before this Court.

2. Attached as Exhibit A hereto are a true and correct copy of emails between me and Erica M. Zilioli, Counsel for the U.S. Army Corps of Engineers in this case, dated February

27-28, 2017. In the emails, I requested a copy of the administrative record filed in this case, and Ms. Zilioli agreed to provide the administrative record filed November 10, 2016.

3. Attached as Exhibit B hereto is a true and correct copy of a letter Ms. Zilioli addressed to me, dated March 1, 2017. I received the letter and the enclosures thereto by Federal Express on or about March 1, 2017. The enclosed disc included a copy of pages USACE_DAPL 72252-53 of the administrative record in this case.

4. Attached as Exhibit C hereto is a true and correct copy of an email sent to me on April 10, 2017, on behalf of David Debold, counsel for Dakota Access, LLC in this case. The email included a link to documents from the administrative record provided to the parties on November 10, 2016, before the Tribe was a party to the case. I accessed the link and downloaded the documents, including the spill model document at USACE_DAPL 74713-29.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Michael L. Roy
Michael L. Roy (DC Bar No. 411841)

November 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2019, I electronically filed the foregoing DECLARATION OF MICHAEL L. ROY IN SUPPORT OF OGLALA SIOUX TRIBE'S SUR-REPLY TO REPLY BRIEF IN SUPPORT OF ARMY CORPS' MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO OGLALA SIOUX TRIBE'S CLAIMS and Exhibits A, B, and C thereto with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Michael L. Roy
Michael L. Roy (DC Bar No. 411841)

Michael L. Roy

From: Zilioli, Erica (ENRD) <Erica.Zilioli@usdoj.gov>
Sent: Tuesday, February 28, 2017 4:55 PM
To: Michael L. Roy
Cc: Schiffman, Reuben (ENRD); Brar, Amarveer (ENRD); Jennifer P. Hughes
Subject: RE: Oglala Sioux v. Corps - consolidation

Thanks, Michael. We are planning to file the motion to consolidate this week for both the Yankton and Oglala Sioux cases. Obviously we would prefer to file an unopposed motion so as soon as you know your client's position please let us know.

We are having more discs made of the November 10 administrative record. If you were to agree to consolidation, we would agree to send you a copy this week.

Thanks,
Erica

Erica M. Zilioli
U.S. Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
202.514.6390

From: Michael L. Roy [mailto:MRoy@hobbsstrauss.com]
Sent: Monday, February 27, 2017 6:13 PM
To: Zilioli, Erica (ENRD) <EZilioli@ENRD.USDOJ.GOV>
Cc: Schiffman, Reuben (ENRD) <RSchifman@ENRD.USDOJ.GOV>; Brar, Amarveer (ENRD) <ABrar@ENRD.USDOJ.GOV>; Jennifer P. Hughes <JHughes@hobbsstrauss.com>
Subject: RE: Oglala Sioux v. Corps - consolidation

We are trying to determine our client's position. When are you planning to file?

On another issue, when can you provide us the administrative record that has been provided to date?

Michael L. Roy, Partner
T 202.822.8282 | F 202.296.8834

HOBBS STRAUS DEAN & WALKER, LLP
2120 L Street NW, Suite 700, Washington, DC 20037

HOBBSSTRAUS.COM

From: Zilioli, Erica (ENRD) [mailto:Erica.Zilioli@usdoj.gov]
Sent: Monday, February 27, 2017 4:18 PM
To: Michael L. Roy <MRoy@hobbsstrauss.com>
Cc: Schiffman, Reuben (ENRD) <Reuben.Schifman@usdoj.gov>; Brar, Amarveer (ENRD) <Amarveer.Brar@usdoj.gov>
Subject: Oglala Sioux v. Corps - consolidation

Michael,

Following up on our conversation last week, we plan to move to consolidate the *Oglala Sioux Tribe v. Corps* case, 1:17-cv-0267 (D.D.C.) and the *Yankton Sioux Tribe v. Corps* case, 1:16-cv-1796 (D.D.C.) with the *Standing Rock* case. Please let us know as soon as possible what your client's position is regarding consolidation.

Thanks,
Erica

Erica M. Zilioli
U.S. Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
202.514.6390

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U.S. Department of Justice

Environment and Natural Resources Division

*Environmental Defense Section
P.O. Box 7611
Washington, DC 20044*

*Telephone: (202) 514-6390
Facsimile: (202) 514-8865*

March 01, 2017

By Federal Express

Michael L. Roy
Hobbs Straus Dean & Walker, LLP
2120 L Street NW, Suite 700
Washington, DC 20037

Re: *Oglala Sioux Tribe v. U.S. Army Corps of Engineers*, 1:17-cv-0267 (D.D.C.)-
Corps' November 10 Administrative Record

Dear Michael:

Enclosed is a disc containing a copy of the U.S. Army Corps of Engineers' administrative record produced November 10, 2016, in *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 1:17-cv-1534 (D.D.C.). You will see that 31 documents were omitted from the disc pending the conclusion of the parties' confidentiality review and discussions. Once Dakota Access, LLC's motion for a protective order concerning 11 of those documents is resolved, we will prepare a revised version of this administrative record.

Please do not hesitate to contact me at (202) 514-6390 or Erica.zilioli@usdoj.gov with any questions.

Best regards,

A handwritten signature in blue ink that reads "Erica Zilioli".

Erica M. Zilioli

*Counsel for the U.S. Army Corps of
Engineers*

Michael L. Roy

From: mail@sf-notifications.com on behalf of David Debold <mail@sf-notifications.com>
Sent: Monday, April 10, 2017 4:36 PM
To: Michael L. Roy
Subject: Files to download

GIBSON DUNN

David Debold has sent you files.

Expires 4/17/17

To download these files, you must first activate your account and set your personal password.

A note from David :

The documents mentioned in my email earlier today are now accessible.

[Download](#)

Trouble with the above link? You can copy and paste the following URL into your web browser:

<https://gibsondunn.sharefile.com/d/8e549051d8d64c51?a=610e015e0a7c9073>

ShareFile is a tool for sending, receiving, and organizing your business files online. It can be used as a password-protected area for sharing information with clients and partners, and it's an easy way to send files that are too large to e-mail.

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